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April 6, 1998

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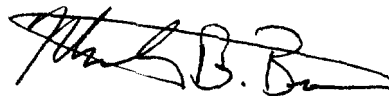
Re: Petition of Ameritech for Relief from Barriers to Deployment of Advanced
Telecommunications Services, CC Docket No. 98-32

Dear Ms. Salas:

Enclosed for filing please find an original and twelve copies of Cablevision Lightpath, Inc.'s Comments in the above-referenced proceeding. Please date stamp the additional enclosed copy and return it to me.

If you have any questions concerning this filing, please contact me.

Sincerely,



Michael B. Bressman

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
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| Petition of Bell Atlantic Corporation |) | CC Docket No. 98-11 |
| for Relief from Barriers to Deployment |) | |
| of Advanced Telecommunications Services |) | |
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| Petition of U S WEST |) | CC Docket No. 98-26 |
| for Relief from Barriers to Deployment |) | |
| of Advanced Telecommunications Services |) | |
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| of Advanced Telecommunications Services |) | |

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COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath") respectfully submits these comments in response to the Petitions of Bell Atlantic Corporation, U S WEST, and Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services ("Petitions").

INTRODUCTION AND SUMMARY

Relying principally on section 706 of the Telecommunications Act of 1996 ("1996 Act"), the Petitions seek immediate relief from the section 271 interLATA services restriction as applied to xDSL-based, high-speed data services, including Internet services. The granting of the Bell companies' Petitions would be in contravention of the plain language of the Communications Act and could create harmful incentives, undercutting the provisioning of quality services to competitors. Accordingly, Lightpath

urges the Commission to proceed with caution and carefully examine the impact this selective deregulation would have on local competitors' ability to rely on the public switched network, which has already been the subject of concern in some key areas.

The Bell companies argue that so long as the interLATA restriction and certain other regulatory obligations remain in place, such as the obligations to unbundle network facilities used to deliver high-speed data services, they will not have an incentive to roll out these high-speed data services broadly. Moreover, the Bell companies also claim they need the relief they seek to level the playing field with other high-speed Internet service providers such as cable companies, whom the Bell companies claim face no regulatory obligations. These claims are not compelling because the Bell companies presently are rolling out xDSL-based, high-speed data services broadly, even without the regulatory relief they seek.^{1/}

The Bell companies' argument for section 706 relief ignores the harm that premature interLATA relief will have on the prospects for local competition. The interLATA services restriction generally bars the Bell companies from carrying *any* telecommunications traffic -- voice or data, ordinary-speed or high-speed -- outside local ("LATA") boundaries in their home regions until they have demonstrated, pursuant to section 271 of the Communications Act, that they have taken all necessary steps to ensure their respective local phone markets are open to competition. To date, the Bell companies have not been willing to make the critical investments necessary to open up their networks to competition. Deregulating the Bell companies' high-speed data services

^{1/} For example, US WEST just announced plans to deploy these services in 40 cities by the end of the June. See Communications Daily at 4 (Mar. 30, 1998).

before their respective section 271 obligations have been satisfied will further diminish their incentive to open their local networks to competition.^{2/}

Nonetheless, the Bell companies now are asking the Commission to ignore these critical restrictions^{3/} and to treat data services as if they are something totally separate and discrete from voice services. The data network, however, cannot be segregated from the voice network, and deregulated, without affecting the latter. These networks are inextricably intertwined, and if they are torn apart and regulated differently, new incentives, such as specific performance standards with an enforcement mechanism aimed at the most critical interconnection services, will be needed to ensure that the Bell companies continue to maintain and invest in their voice networks -- networks on which CLECs will continue to have to rely to provide their competitive telephony services.

In addition, the Bell companies have asked the Commission to allow them to deny access to their data networks, even though these networks include some of the same bottleneck facilities that make up the Bell companies' voice networks.^{4/} Section 251 requires the Bell companies to provide unbundled access to these network elements, if

^{2/} Lightpath has been strenuously arguing to federal and state commissions that Bell Atlantic should not be granted section 271 approval without first meeting the terms of the checklist and establishing meaningful post-entry enforcement scheme -- one that includes, at its core, a set of company-specific performance measures targeted at the most critical interconnection services (e.g., interconnection trunks, number portability, etc.). Bell Atlantic has previously agreed, in the context of Lightpath's interconnection agreement in New York, to such an enforcement scheme. Recently, however, Bell Atlantic has backed off of this commitment and made it clear that it will not agree to this same enforcement scheme in other states in Lightpath's footprint (e.g., New Jersey, Connecticut, and Massachusetts).

^{3/} This is not the first time that the Bell companies have attempted to short-circuit the section 271 process. As the Commission well knows, the Bell companies initiated a lawsuit challenging the constitutionality of section 271 (which is now before the Fifth Circuit).

^{4/} See, e.g., Bell Atlantic Petition at 17-18; U S WEST Petition at 44-52.

they are being used for telecommunications services. Transmission of data across LATA boundaries, as the Bell companies seek to do, is a telecommunications service, and, therefore, facilities used for such service must be unbundled. Thus, this request, like the others, would undermine section 251(c), one of the core requirements of the 1996 Act.

The Bell companies have asked the Commission to decide quickly matters of supreme importance to competition. It would be dangerous for the Commission to deregulate parts of the Bell companies' networks before an extensive dialogue and evaluation has taken place to address fully the effect of such actions. Lightpath urges the Commission to hold off such deregulation until the Bell companies have opened their local markets and until the impact on competitors' ability to rely on the public switched network is fully analyzed. The Commission, therefore, should deny these Petitions.

I. THE BELL COMPANIES EXAGGERATE THE NECESSITY OF IMMEDIATE INTERLATA RELIEF FOR THE ROLL OUT OF xDSL ACCESS SERVICES AND UTTERLY IGNORE THE COSTS TO LOCAL COMPETITION

Necessity of Immediate InterLATA Relief. As noted, the regulatory obligation from which the Bell companies most want immediate relief is the interLATA services restriction, codified in section 271 of the Communications Act. As Bell Atlantic explains, it seeks this relief mainly because (1) such relief would allow it to build its own high-speed Internet backbone, and (2) without its own high-speed backbone, it cannot guarantee overall Internet service speeds necessary to make high-speed data access services based on xDSL technology attractive to customers and thus worth rolling out.

The Bell companies grossly underestimate the performance levels of existing, non-proprietary Internet backbones, which continue to improve and gain speed. If

existing backbones were as slow as the Bell companies suggest (Bell Atlantic estimates that current backbones operate at roughly 40 kbps), their thriving high-speed data access services based on T-1 technology, which guarantee speeds much greater than 40 kbps and which rely on existing backbones, would be non-existent. Furthermore, others, such as Lightpath's parent company, Cablevision, are currently aggressively rolling out high-speed Internet services that rely on the same non-proprietary Internet backbones as the Bell companies, undermining the Bell companies' claims that these backbones are too slow to support high-speed Internet access technologies.

Bell Atlantic also complains about another barrier that it alleges the interLATA services restriction creates for its Internet services (high-speed or otherwise). Specifically, Bell Atlantic suggests that it is "uniquely hobbled" by the fact that, until it obtains section 271 approval, the customers of Bell Atlantic's Internet service provider, unlike the customers of other providers, must contract with a separate interLATA service provider to carry that customer's Internet traffic across LATA boundaries. This regulatory obligation is trivial. Although Bell Atlantic customers must obtain a separate interLATA service provider, registering for Bell Atlantic's existing "dial-up" Internet service -- branded as Bell Atlantic.net™ -- demonstrates the ease of the process. Bell Atlantic requires the customer to choose an interLATA service provider, or what it calls a Global Service Provider, with one simple click of the computer mouse. In the New York metropolitan area (and perhaps other areas), the task is even simpler because there appears to be only a *single* choice for interLATA service provider.^{5/}

^{5/} If Bell Atlantic.net customers really do have a "choice" of only one Global Service Provider in the New York metropolitan area, the question arises whether this "choice" conforms with

Local Competition. In addition to exaggerating the necessity of being allowed immediately to build an Internet backbone, the Bell companies also completely ignore the cost of premature interLATA relief in terms of the development of local competition. At the end of the extensive debate concerning section 271, Congress overwhelmingly voted for an incentive-based scheme: A Bell company would first have to open its local markets to competition before it may enter the lucrative interLATA services market. In devising this scheme, Congress believed that only the “carrot” of interLATA service authorization would be powerful enough to entice the Bell companies to undertake the procompetitive steps necessary to open their local markets irreversibly to competition. Significantly, it was also well understood by Congress that this “carrot” included both voice and data interLATA services.^{6/}

As part of the 1996 Act, Congress enacted section 10, which grants the Commission sweeping regulatory forbearance authority. To ensure against backsliding in the implementation of the incentive-based section 271 scheme, however, Congress singled out section 271 as one of only two provisions in the entire Communications Act that are ineligible for forbearance. (The other provision is section 251(c), which dictates

equal access requirements now codified in section 251(g) of the Communications Act and other applicable regulations. The risk of granting Bell Atlantic extraordinary new authority with regard to high-speed Internet services is heightened when Bell Atlantic may not currently be conforming to its obligations with regard to ordinary dial-up Internet services.

^{6/} Certain provisions in the 1996 Act confirm that the interLATA services restriction covers interLATA Internet services, high-speed or otherwise. For example, section 271(g)(3) exempts interLATA “Internet services” provided to schools from the interLATA services restriction, thereby underscoring the fact that interLATA Internet services would otherwise be covered by the restriction. *See also* 47 U.S.C. § 272 (imposing a separate affiliate requirement, post-section 271 approval, on interLATA telecommunications services and “interLATA information services”).

obligations that are critical to the development of local competition.) Congress's decision to withhold section 271 from the Commission's section 10 forbearance authority has been fully justified because even with the incentive of long distance entry in place, the Bell companies still fail to meet their obligations to local competitors. The Commission must follow Congress's mandate by requiring the Bell companies to open their markets before obtaining section 271 interLATA relief.

II. THE COMMUNICATIONS ACT DOES NOT PERMIT THE INTERLATA SERVICES RESTRICTION TO BE LIFTED PREMATURELY

As just noted, Congress placed a significant limitation on the Commission's section 10 regulatory forbearance authority: "[T]he Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented."^{7/} Thus, section 10 does not allow the Commission to forbear from applying section 271 before the section 251(c) and section 271 obligations are met. Because Lightpath's most immediate need is for high quality interconnection services, which would be undermined by granting the Bell companies' request for immediate interLATA relief, Lightpath is focusing these initial comments on such request. The Bell companies' other requests, however, are also outside the Commission's forbearance authority. The limitation in section 10, for example, forbids relief for the Bell companies, with respect to its high-speed data services, from the resale and unbundling requirements in section 251(c) and from the separate affiliate requirement in section 272.^{8/}

^{7/} *Id.* § 160(d).

^{8/} *See id.* § 271(d)(3)(B) (listing compliance with section 272 separate affiliate requirement as

Bell Atlantic does not dispute that section 10 bars the Commission from forbearing from implementing the section 271 incentive-based scheme. Instead, Bell Atlantic seeks forbearance under section 706. Section 706 requires the Commission to encourage the deployment of

advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.^{9/}

In Bell Atlantic's view, the reference in section 706 to the "utiliz[ation]" of the "regulating method" of "regulatory forbearance" is actually an affirmative grant of regulatory forbearance authority -- independent and separate from the affirmative grant in section 10 -- and one that admits of no exception for sections 271 and 251(c).

The fatal flaw in Bell Atlantic's reading of section 706, however, is that the reference to the "utiliz[ation]" of the "regulating method" of "regulatory forbearance" is not, in fact, an independent grant of authority. Rather, it is simply a reference back to section 10 itself -- including any limitations contained therein -- or to any other applicable regulatory forbearance provision in the Communications Act. Any other reading leads to absurd results. If the reference to "regulating forbearance" in section 706 is an independent grant of authority, then so too is the more general reference later in the

a requirement for section 271 approval).

^{9/} *Id.* § 157 note. Section 706 is especially targeted at encouraging advanced services for schools. In this regard, it is worth noting, as U S WEST does, U S WEST Petition at 31 n.13, that section 271 already makes an exception to the interLATA services restriction for interLATA Internet services to schools. *See* 47 U.S.C. § 271(g)(2).

sentence to "other regulating methods." The Commission would then have authority, in the name of encouraging the deployment of advanced telecommunications capability, to devise any kind of "regulating metho[d]" it regards as reasonable and necessary, even a method that is outside the contemplation of the Communications Act or directly contrary to it. Congress did not intend to grant the Commission such plenary authority.

The Bell companies also argue that section 3(25)(B) bestows on the Commission the requisite authority to grant immediate interLATA relief for high-speed data services. Section 3(25)(B) does bestow on the Commission the authority to "modif[y]" LATA boundaries. What the Bell companies are seeking here, however, is not in any way an authorized LATA boundary modification. First, the Bell companies effectively seek to create one big national LATA with respect to high-speed data services. The radical creation of one super-LATA is hardly a "modification" of such boundaries. It eliminates them. Second, any argument that the Commission has the authority to create one super-LATA with respect to high-speed data services under section 3(25)(B) applies with equal force to other services, such as voice services or ordinary-speed data services. Thus, the Bell companies' argument would create one super-LATA for voice services as well, which would entirely vitiate section 271 (as well as the limitation in section 10 addressing section 271), and which would be outside the Commission's authority.

The Bell companies disavow that they are seeking in these Petitions to make a super-LATA for voice services. They claim that they are requesting a LATA boundary modification only for the limited purpose of allowing the Bell companies to carry high-speed data traffic. This argument highlights the most fundamental flaw in their reliance on section 3(25)(B). When the interLATA restriction is lifted for a particular purpose,

such relief cannot reasonably be characterized as a LATA boundary modification. Rather, such relief is properly characterized as a waiver, which is how such relief was treated under the pre-1996 Act jurisprudence of the AT&T consent decree.^{10/} The essence of a genuine LATA boundary modification is that the boundary is actually moved (and for all purposes), such that some previously interLATA transmissions become intraLATA and other previously intraLATA transmissions become interLATA, which is not the case with the LATA boundary “modification” proposed by the Bell companies in their Petitions. Section 271 and the 1996 Act, however, do not give the Commission authority to grant waivers.

CONCLUSION

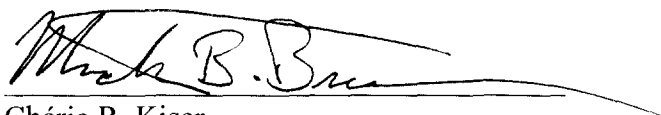
The Bell companies do not need immediate interLATA relief to have the incentive to broadly roll out xDSL-based, high-speed interLATA services. They, like many of their competitors, have already begun to provide high-speed services without any regulatory relief. Indeed, the market for high-speed data services and Internet backbones is already, and will continue to be, competitive. More important, the Bell companies’ Petitions, if granted, would violate the plain language of the Communications Act and could result in harmful incentives that could undermine the provisioning of quality services to competitors. The Bell companies must open their local markets to full competition before they can be permitted to provide interLATA services. Indeed, section 10 of the

^{10/} In this regard, Bell Atlantic’s attempt to characterize certain of the AT&T consent decree decisions as LATA boundary modifications, rather than as waivers, is misleading. *See* Bell Atlantic Petition at 11 n.12. Many, if not all of these decisions, involved waivers, not modifications. *See, e.g., United States v. Western Elec. Co.*, No. 82-0192, slip op. at 13 (D.D.C. Apr. 28, 1995) (“The question, therefore, is whether the Court should grant the waiver for those areas where there is genuine evidence of competition[.]” (emphasis added)).

Communications Act prohibits the Commission from forbearing from the section 271 and 251(c) obligations and granting the requested relief until these obligations are implemented. For these reasons, the Commission should deny the Bell companies' Petitions.

Respectfully submitted,

CABLEVISION LIGHTPATH, INC.

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April 6, 1998

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CERTIFICATE OF SERVICE

I, Michael B. Bressman, hereby certify that on the 6th day of April, 1998, I caused copies of the foregoing "Comments of Cablevision Lightpath, Inc." to be sent by either first class mail, postage pre-paid, or by hand delivery (*) to the following:

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